

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

UNADA (HK) LTD,

Plaintiff,

v.

EC DRIVES, LLC and SPM (UK) LIMITED,

Defendants.

Civil Action No.: 1:18-cv-11638-PBS

JURY TRIAL DEMANDED

**JOINT MOTION FOR ENTRY OF ORDER
PRESCRIBING NEUTRAL EXPERT EVALUATION**

At the November 20, 2018 scheduling conference the Court ordered the parties to provide notice within two weeks if they would consent to using a neutral expert to assess whether the accused motors contain trade secrets. The parties consented to the use of a neutral expert and agreed to submit a proposed procedure to the Court by December 18, 2018. *See* ECF Nos. 34, 35.

The parties jointly and respectfully request that the Court enter an order prescribing the neutral expert evaluation according to the procedure described below. Furthermore, the parties request that the Court stay all discovery and deadlines in this case to allow the evaluation to proceed efficiently and without distraction. The parties will notify the Court at the conclusion of the evaluation if the case is resolved or to request a new schedule.

Procedure for Neutral Expert Evaluation

The parties shall undertake a neutral expert evaluation according to the following procedure:

(1) Each party shall provide to the other party the specific model numbers or information sufficient to identify the other party's motor(s) or components that the party accuses of containing its trade secrets by January 7, 2019.

(2) The parties shall agree on a neutral expert by January 18, 2019.

(3) Each party shall provide to the other party a sample of each accused motor within its possession, custody, or control by January 18, 2019.

(4) Each party shall submit its opening brief to the neutral expert, with service to the other party, by February 22, 2019. In their opening briefs, each party shall (a) identify with specificity each alleged trade secret, and (b) provide evidence to support its claims that the accused motor or motors incorporate the alleged trade secret. Such evidence shall not include expert testimony.

(5) The parties shall submit responsive briefs to the neutral expert, with service to the other party, by March 22, 2019. The parties may address in their briefing whether the alleged trade secrets are in the public domain or otherwise publicly known. Responsive briefs shall not include expert testimony.

(6) A hearing between the parties and before the neutral expert shall be held on or before April 26, 2019. At the hearing the parties shall present their arguments and evidence to the neutral expert based on a mutually-agreed upon schedule. The Federal Rules of Evidence shall not apply at that hearing. Each party may bring its own technical expert to the hearing. The parties may have the hearing transcribed and/or recorded.

(7) The neutral expert shall issue a written report to the parties within thirty days of the hearing. The report shall determine whether each alleged trade secret identified by a party is (a) contained in the accused motor(s), and (b) whether the alleged trade secret is in the public domain or otherwise publicly known.

(8) Each party may submit objections to the findings of the neutral expert, with service to the other party, within fourteen days after the report is issued.

(9) Within fourteen days after receiving the objections the neutral expert shall deny the objections or issue a revised report.

(10) Within fourteen days of the issuance of the neutral's report or neutral's revised report, whichever is later, the parties shall file with the Court a joint notice advising of the completion of neutral expert assessment without describing the conclusions thereof. Should the case not resolve as a result of the neutral expert assessment, the parties shall in their joint notice request a status conference with the Court to establish a new case schedule.

(11) The neutral expert's findings and conclusions shall be non-binding on the parties and the Court.

(12) The parties' briefs, objections, and other submissions in the neutral expert assessment, the hearing, and any transcript or recording thereof, as well as the neutral's report and revised report (if any), shall be treated as "confidential" pursuant to a protective order to be entered in this case and shall not be filed with the Court unless under seal. Each party receiving confidential information shall use that confidential information only to prosecute and/or defend this action and for no other purpose.

(13) The fees and costs for the neutral expert shall be borne 50% by Plaintiff and 50% by Defendants.

(14) All discovery and deadlines in this case are stayed pending notice from the parties pursuant to item 10, above.

Respectfully submitted,

Dated: December 18, 2018

/s/Anderson J. Duff

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*Attorneys for Defendants EC Drives, LLC
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IT IS SO ORDERED,

Dated: _____

The Honorable Patti B. Saris
Chief United States District Judge

CERTIFICATE OF SERVICE PURSUANT TO LOCAL RULE 5.2(B)

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on December 18, 2018.

/s/Brian M. Gaff

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